REMARKS

The above-identified application has been reviewed in light of the Office Action mailed on March 11, 2010. By the present amendment, the Applicants have amended claims 1 and 19. Additionally, the Applicants have added new claims 27-30 for consideration herein. It is respectfully submitted that the pending claims are fully supported by the specification, introduce no new matter, and are allowable over the references of record.

In the Office Action, claims 1, 4-6, and 19-24 were rejected under 35 U.S.C. § 102(b) as being anticipated by U.S. Patent No. 4,628,943 to Miller ("Miller"). According to the Office Action, Miller discloses all the features recited in claims 1, 4-6, and 19-24. The Applicants respectfully disagree and traverse the rejection for the reasons detailed below.

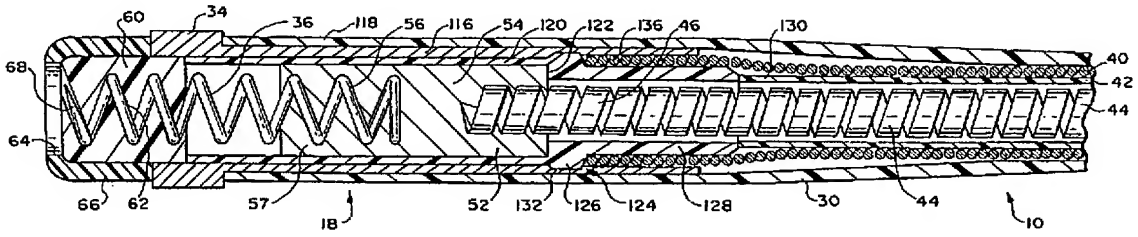
As amended, claim 1 recites an applicator including, *inter alia*, an outer tube, an actuator, a plurality of fasteners, and a rotator having a longitudinal groove configured to receive a portion of at least two fasteners of the plurality of fasteners, wherein actuation of the rotator ejects at least one fastener of the plurality of fasteners from the terminal end.

As amended, claim 19 recites an applicator having, *inter alia*, an outer tube, an actuator, a plurality of fasteners, and a rotator adapted to receive a portion of each fastener in the plurality of fasteners, wherein actuation of the actuator results in rotation and translation of each fastener of the plurality of fasteners relative to the outer tube and the rotator remains axially stationary with respect to the outer tube.

However, despite the mischaracterization proffered in the Office Action, Miller relates to an implantable pacing lead having a **single** cardiac electrode that is insertable into heart tissue. Briefly, as illustrated below in Figure 2 of the Miller reference, a distal end 46 of a helical drive member 44 is mechanically connected to a proximal end 52 of a cylindrical mounting member

54 that is rotatably mounted within an electrode assembly 18. A proximal end 56 of a securing device 36 is mounted to a distal end 57 of the cylindrical mounting member 54. A plug 60 is disposed at a distal end of the electrode assembly 18. The plug 60 includes a spiral passageway 62 for receiving the securing device 36 therein. A space is defined between the distal end of the mounting member 54 and the proximal end of the plug 60.

FIG. 2



As configured, rotation of the helical drive member 44 causes rotation of the mounting member 54 and the securing device 36. Thus, "the securing device 36 is rotated through the passageway 62 in a screw like manner and exits the passageway 62 through an opening 64 in an insulative tip member 66." (Miller at Col. 6, ll. 15-18). Since the proximal end 56 of the securing device 36 is mounted to the distal end 57 of the mounting member 54, as the securing member 36 moves forward through the passageway 62 in a screw like manner, the forward movement of the securing device 36 acts to longitudinally/axially reposition the mounting member 54 distally through the space until it contacts the proximal end of the plug 60.

Miller's pacing lead 10 only includes a single securing device 36 and does not **eject** the securing device 36 from the distal electrode assembly 18. Rather, Miller's device is specifically configured such that the securing device 36 is retained within the distal electrode assembly 18 for forming the anode portion of the electrical circuit. As disclosed in Miller, the electrical circuit (i.e. conductive path) is formed when the securing device 36 is inserted into an atrium or

ventricle of a heart after the lead 10 is implanted, which establishes the anode connection. Then a cathode connection is established from terminal pin 22 to ring electrode 34 with the anode connection being from anode ring 24 to securing device 36. (see Miller at Col. 7, ll. 62-68). Separating the securing device 36 from the pacing lead 10 would sever the electrical connection, thereby defeating Miller's intended purpose. Miller's device is specifically designed and constructed for use with a **single** securing device and is not suitable for accommodating a plurality of electrodes. There is no disclosure or suggestion in Miller for a plurality of electrodes.

Further still, Miller's disclosure is directed away from the claimed subject matter since operation of Miller's device necessitates rotation and longitudinal translation of the mounting member 54, while maintaining a connection between the securing device 36 and the pacing lead 10. Miller's disclosed pacing lead 10 is not capable of rotating more than one securing device 36 since the proximal portion of the securing device 36 remains connected to plug 60 of the pacing lead 10.

Therefore, Miller fails to anticipate or suggest a device including, *inter alia*, a plurality of fasteners, a rotator that remains axially stationary, and at least one fastener being ejected from the distal end of the device as recited in amended independent claim 1. Miller also fails to anticipate or suggest a device including, *inter alia*, a plurality of fasteners, a rotator having a longitudinal groove adapted to receive a portion of each fastener in the plurality of fasteners, and an actuator, wherein actuation of the actuator results in rotation and translation of each fastener in the plurality of fasteners and the rotator remains axially stationary as recited in amended independent claim 19.

Therefore, it is respectfully submitted independent claims 1 and 19 are in condition for

allowance. Since claims 4-6, 23, and 24 depend from independent claim 1, it is respectfully submitted that these claims are also in condition for allowance. Additionally, since claims 20-22 depend from independent claim 19, it is respectfully submitted that these claims are also in condition for allowance.

35 U.S.C. § 103 (a) states:

> A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

In the Office Action, claims 2 and 3 were rejected under 35 U.S.C. § 103(a) as being unpatentable over Miller in view of U.S. Patent No. 4,628,943 to Smith et al. ("Smith"). The Office Action alleged that Miller discloses the claimed device except for the lock/clip indicator and relied upon Smith to supply the features missing from Miller. Adding the lock/clip indicator and load spring of Smith to Miller fails to cure the deficiencies of Miller. Smith fails to disclose or suggest any additional features that, in combination with Miller, suggest, as a whole, the applicator recited in claims 2 and 3. Since claims 2 and 3 depend from independent claim 1, it is respectfully submitted that these claims are in condition for allowance for at least the same reasons independent claim 1 is allowable.

Claims 7 and 8 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Miller in view of U.S. Patent No. 5,100,420 to Green et al. ("Green"). According to the Office Action, Miller discloses all the claimed features except that the distal portion and the proximal portion are releasably secured together with the distal portion being disposable and the proximal portion

being reusable. Adding the distal and proximal portions of Green fails to cure the deficiencies of Miller. Green fails to disclose or suggest any additional features that, in combination with Miller, suggest, as a whole, the applicator recited in claims 7 and 8. Since claims 7 and 8 depend from independent claim 1, it is respectfully submitted that these claims are in condition for allowance for at least the same reasons independent claim 1 is allowable.

Claims 9-16 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Miller in view of U.S. Patent No. 5,607,436 to Pratt et al. ("Pratt"). The Office Action asserted that Miller discloses all the claimed features except for a lever, a lead screw, and a nut driver. The Office Action relied upon Smith to disclose the features absent in Miller. Adding the lever of Pratt fails to cure the deficiencies of Miller. Pratt fails to disclose or suggest any additional features that, in combination with Miller, suggest, as a whole, the applicator recited in claims 9-16. Since claims 9-16 depend from independent claim 1, it is respectfully submitted that these claims are in condition for allowance for at least the same reasons independent claim 1 is allowable.

The Office Action rejected claims 17 and 18 under 35 U.S.C. § 103(a) as being unpatentable over Miller in view of Pratt and further in view of U.S. Patent No. 5,487,500 to Knodel et al. ("Knodel"). The Office Action alleged that Miller and Pratt disclose the claimed device, but fail to disclose a plurality of teeth and relied upon Knodel to supply the missing disclosure. Adding the mid-section extension of Knodel fails to cure the deficiencies of Miller and Pratt. Knodel fails to disclose or suggest any additional features that, in combination with Miller and Pratt, suggest, as a whole, the applicators recited in claims 17 and 18. Since claims 17 and 18 depend from independent claim 1, it is respectfully submitted that these claims are in condition for allowance for at least the same reasons independent claim 1 is allowable.

Claims 25 and 26 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Miller. The Office Action asserted that Miller fails to disclose that at least one fastener is formed from an absorbable material and alleged that it would have been obvious to form the fastener from an absorbable material. As discussed hereinabove, Miller fails to anticipate or suggest the devices recited in independent claims 1 and 19. Forming the electrode lead disclosed in Miller from an absorbable material fails to cure the deficiencies of Miller. Miller fails to disclose or suggest, as a whole, the devices recited in independent claims 1 and 19. Since claims 25 and 26 depend from independent claims 1 and 19, it is respectfully submitted that these claims are in condition for allowance for at least the same reasons as independent claims 1 and 19 are allowable.

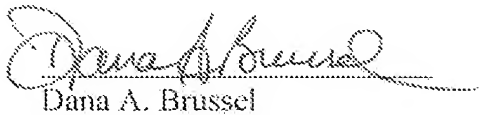
By the present amendment, the Applicants have added new claims 27-30. New claim 27 depends from independent claim 19. As discussed hereinabove, independent claim 19 is neither anticipated nor suggested by any of the references of record. Therefore, it is respectfully submitted that new claim 27 is allowable for at least the reasons that independent claim 19 is allowable. New independent claim 28 recites, *inter alia*, an applicator including a plurality of fasteners, a housing, an elongate tubular member, a rotator disposed in the elongate tubular member, and an actuator located in the housing, the actuator operably coupled to the rotator such that a first actuation of the actuator rotates and ejects a first fastener of the plurality of fasteners and a second actuation of the actuator rotates and ejects a second fastener of the plurality of fasteners. It is respectfully submitted that none of the references of record disclose or suggest the features recited in new claim 28. Therefore, it is respectfully submitted that new claim 28 is in condition for allowance. Since new claims 29-30 depend from new claim 28, it is respectfully submitted that these claims are also in condition for allowance.

As part of the Applicants continuing duty of disclosure, the Applicants are informing the Examiner that U.S. Patent Application Serial Number 11/978,893, a related family application is presently docketed to Examiner Yabut in art unit 3734. In an Office Action mailed on March 11, 2010, claim 1 was rejected under 35 U.S.C. § 102(a) over U.S. Patent No. 5,259,395 to Li.

In view of the foregoing, reconsideration of the application and allowance of claims 1-30 is earnestly solicited. Should the Examiner desire a telephonic interview to resolve any outstanding matters, the Examiner is sincerely invited to contact the undersigned at (631) 501-5713.

Please charge any deficiency as well as any other fee(s) which may become due under 37 C.F.R. § 1.16 and/or 1.17 at any time during the pendency of this application, or credit any overpayment of such fee(s) to Deposit Account No. **21-0550**. Also, in the event any extensions of time for responding are required for the pending application(s), please treat this paper as a petition to extend the time as required and charge Deposit Account No. **21-0550** therefor.

Respectfully submitted,



Carter, DeLuca, Farrell & Schmidt, LLP
445 Broad Hollow Road - Suite 420
Melville, New York 11747
Tel.: (631) 501-5713
Fax: (631) 501-3526

Dana A. Brussel
Reg. No. 45,717
Attorney for Applicants

Send correspondence to:
Chief Patent Counsel
Covidien
60 Middletown Avenue
North Haven, Connecticut 06473